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Attorneys for Defendants.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DR. SHAUN L.W. SAMUELS,

Plaintiff,

vs.

TRIVASCULAR, INC., et al.

Defendant.

TRIVASCULAR, INC.,

Counter-Claimant,

vs.

DR. SHAUN L. W. SAMUELS,

Counter-Defendant.

Case No. 3:13-CV-02261-EMC

**STIPULATION AND JOINT CASE
MANAGEMENT STATEMENT AND
[PROPOSED] ORDER CONTINUING
CASE MANAGEMENT CONFERENCE**

Pursuant to Civil L.R. 16-9, Plaintiff and Counter-Defendant, Dr. Shaun L.W. Samuels ("Samuels") and Defendant and Counter-Claimant, TriVascular, Inc. ("TriVascular") and Defendants Chobotov, Humphrey and Whirley respectfully submit this Stipulation and Joint Case

1 Management Statement and [Proposed] Order Continuing Case Management Conference. An initial
2 Joint Case Management Statement was filed on March 3, 2015 (Dkt. No. 50) setting forth the
3 various requirements under Civil L.R. 16-9 and Patent L.R. 2-1(b), and Rule 26(f) of the Federal
4 Rules of Civil Procedure. As set forth below, the Parties are currently preparing a stipulation that
5 will place the case in a position to appeal based on a final judgment of non-infringement, and
6 therefore request a continuation of the currently scheduled Case Management Conference currently
7 scheduled for December 10, 2015.
8

9 **BACKGROUND AND STATUS OF LITIGATION**

10 This is a patent infringement action brought by Samuels against TriVascular, Michael A.
11 Chobotov, Robert G. Whirley, and Joseph W. Humphrey. Samuels filed this patent litigation action
12 against TriVascular on May 17, 2013. *See* Dkt. No. 1. Samuels filed a Second Amended Complaint
13 on August 13, 2015 adding the Individual Defendants. *See* Dkt. No. 77. The Defendant TriVascular
14 filed an Answer, Affirmative Defenses and Counterclaims to Plaintiff's Second Amended Complaint
15 on August 27, 2015 (Dkt. No. 78), and the Individual Defendants filed their Answer and Affirmative
16 Defenses on August 27, 2015 (Dkt. No. 79). TriVascular's pending counterclaims are patent
17 counterclaims of non-infringement (First Counterclaim) and invalidity (Second Counterclaim), as
18 well as counterclaims for breach of contract and promissory estoppel (Third, Fourth and Fifth
19 Counterclaims).

20 On November 12, 2015, this Court construed certain claim terms found in U.S. Patent No.
21 6,007,575 patent. (Claim Construction Order, Dkt. No. 92). In view of that construction, Plaintiff
22 does not believe it can prove infringement of the accused device and intends to appeal the Claim
23 Construction Order.
24

25 **STIPULATION FOR APPEAL**

26 The Parties are currently preparing a stipulation that will place the case in a position to
27 appeal based on a final judgment of non-infringement. The Court's Claim Construction Order (Dkt.
28 No. 92) construed certain claim terms such that Plaintiff does not believe it can prove infringement.

1 The parties have tentatively agreed to file a request and stipulation providing that the Court issue a
 2 final judgment dismissing Plaintiff's patent infringement claims and certify them for appeal under
 3 Fed. R. Civ. P. 54(b).

4 The parties have agreed a postponement of the upcoming status conference would be
 5 beneficial to provide them time to finalize and file the stipulation. The parties anticipate they will be
 6 able to do so before December 15, 2015.

7
 8 IT IS HEREBY STIPULATED, by and between the parties, by and through their respective
 9 attorneys of record, that the Case Management Conference currently scheduled for December 10,
 10 2015 be continued to a date at least 45 days hence to permit the parties to prepare and file a
 11 stipulation as described above.
 12

13 DATED: December 2, 2015

14 /s/ James D. Petruzzi

15 James D. Petruzzi
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20 /s/ Marc H. Cohen

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22 Attorneys for Defendants
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ATTESTATION OF CONCURRENCE IN FILING

I, Marc H. Cohen, am the ECF User whose identification and password are being used to file this Joint Stipulation. In compliance with Local Rule 5-1(i)(3), I hereby attest that James D. Petruzzi of THE PETRUZZI LAW FIRM has concurred in this filing.

DATED: December 2, 2015

/s/ Marc H. Cohen

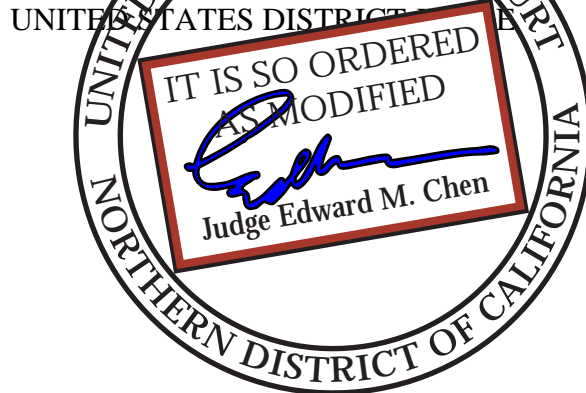
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Further CMC is reset from 12/10/15 to 2/4/16 at 10:30 a.m. An updated joint CMC statement shall be filed by 1/28/16.

DATED: 12/4/15



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 2, 2015 that a copy of the foregoing document is being electronically filed with the Clerk of the United States District Court for the Northern District of California by using the CM/ECF system, which will send notice of such filing to all counsel of record.

DATED: December 2, 2015

/s/ Marc H. Cohen

Marc H. Cohen

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